

# Selection of Gov. Walz as VP Harris's Running Mate Triggers Federal Pay-to-Play Restrictions on Investment Advisers and Other Financial Industry Professionals

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Vice President Kamala Harris's selection of Minnesota Gov. Tim Walz as her running mate imposes restrictions on campaign contributions to the Harris-Walz campaign by federally registered investment advisers (RIAs), exempt reporting advisers (ERAs) and their Covered Associates (as defined below) and other financial industry professionals under various federal pay-to-play laws. As Gov. Walz is the sitting governor of Minnesota, these limitations could bar firms from being compensated for advisory services provided to certain Minnesota state governmental entities and pension plans. Similar issues arose in 2016 for the Trump campaign when former President Donald Trump selected Indiana Gov. Mike Pence as his running mate. Contributions to other 2024 election campaigns involving candidates for, or incumbents, holding state or local office also could trigger the same issues.

## Investment Advisers

With respect to investment advisers, Rule 206(4)-5 under the Investment Advisers Act of 1940, as amended, prohibits RIAs and ERAs from providing advisory services for compensation to a state or local public pension plan or other "government entity" pension plan if, within the past two years, they or their Covered Associates made a political contribution above a *de minimis* exception amount to an elected official of a state who is in a position to influence the selection of the investment adviser to manage such public assets. Covered Associates include an investment adviser's (i) general partner, managing member and executive officers; (ii) any employees who solicit government clients (and their supervisors up the chain of command); and (iii) any political action committees they control.

The Minnesota State Board of Investment is responsible for investing Minnesota public assets (Minnesota Public Assets), including the assets of three statewide retirement systems, other public retirement savings plans, tax-advantaged savings plans, state agency cash balance accounts and non-retirement assets. As Chair of the Minnesota State Board of Investment, Gov. Walz is in a position to influence the selection of investment advisers to manage Minnesota Public Assets. Therefore, contributions to the Harris-Walz campaign by RIAs, ERAs and their Covered Persons above the *de minimis* exception amount will trigger a two-year time out (the "Time Out") from managing Minnesota Public Assets by such investment advisers. Notably, Rule 206(4)-5 imposes strict liability on investment advisers, meaning that a non-*de minimis* contribution automatically triggers the Time Out, even in the absence of any *quid pro quo* arrangement. Indeed, the Securities and Exchange Commission (SEC) has brought numerous enforcement actions against investment advisers for violating Rule 206(4)-5, even in the absence of any *quid pro quo* arrangements.

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The *de minimis* exception applies when a Covered Associate, who is a natural person, makes political contributions. This includes contributions to officials for whom the Covered Associate is entitled to vote for and if the total contributions do not exceed \$350 to anyone official per election. For non-US citizens and other persons not permitted to vote in the presidential election, the *de minimis* exception is lowered to \$150. **Consequently, contributions to the Harris-Walz campaign below \$350 in the aggregate by a natural person Covered Associate entitled to vote in the presidential election, and/or by contributions below \$150 in the aggregate from a natural person Covered Associate not entitled to vote in the presidential election, will not trigger the Time Out.** Moreover, contributions made to Vice President Harris before she selected Gov. Walz on August 6 will not trigger the Time Out.

In addition to the contribution limitations discussed above, Rule 206(4)-1 also prohibits RIAs, ERAs and their Covered Associates from soliciting contributions to the Harris-Walz campaign. Violations of this prohibition would not trigger the Time Out; however, they could subject the investment adviser to an enforcement action.

### Other Federal Pay-to-Play Rules

The Harris-Walz ticket raises similar issues under other federal pay-to-play rules that apply to other financial industry professionals, as enumerated below.

- CFTC Rule 23.451 prohibits a swap dealer from offering to enter or entering into a swap or trading strategy involving Minnesota Public Assets within two years of the swap dealer or its covered persons making a contribution in excess of \$350 to the Harris-Walz campaign.
- Rule 15Fh-6 under the Securities Exchange Act of 1934 prohibits a security-based swap dealer from offering to enter or entering into a security-based swap or trading strategy involving Minnesota State Public Assets within two years of the swap dealer or its covered persons making a contribution in excess of \$350 to the Harris-Walz campaign.
- MSRB Rule G-37 prohibits municipal dealers from engaging in municipal securities business and municipal advisors from engaging in municipal advisory business with certain Minnesota municipal entities within two years of the municipal dealer or adviser or their covered persons making a contribution in excess of \$250 to the Harris-Walz campaign.
- FINRA Rule 2030 restricts broker-dealers and their covered persons from soliciting for compensation Minnesota Public Assets on behalf of investment advisers for two years after making a contribution in excess of \$350 to the Harris-Walz campaign.

### Other Campaigns

Given that it is an election year, numerous federal, state and local campaigns could be subject to the federal pay-to-play rules as well. These rules could impact the ability to obtain business from governmental entities and public pension plans of additional states and municipalities. Contributions to those campaigns may also be subject to state and local pay-to-play rules. Accordingly, financial service firms should be vigilant in monitoring the political contributions and activities of their personnel.

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## CONTACTS

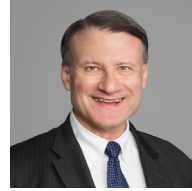
For more information, please contact your Katten attorney or any of the following [Financial Markets and Funds](#) attorneys.



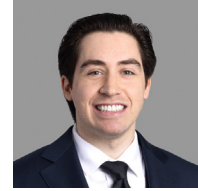
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